

## The State of South Carolina



## Office of the Attorney General

Opinion No 8794

Pg 252

T. TRAVIS MEDLOCK  
ATTORNEY GENERALREMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3636

November 25, 1987

The Honorable David H. Maring, Sr.  
Resident Judge, The Family Court  
of the 15th Judicial Circuit  
Post Office Box 806  
Georgetown, South Carolina 29442

IN RE: Review hearings of Respondents who have been  
committed to the county jail for contempt of  
court for non-support orders

Dear Judge Maring:

I refer to your September 15, 1987 Opinion request to Attorney General Medlock in which you raised four questions relating to the above topic.

1. When a judge has committed a respondent for contempt and executes the commitment order, can he subsequently change the decree?

In asking whether a judge can "change the decree," I presume you are referring to a modification by way of a subsequent or supplemental court order. Under §20-7-420(25), Code of Laws of South Carolina, 1976, the family courts of this state statutorily have jurisdiction to modify or vacate "any order" issued by that court. Stamey v. Stamey, \_\_\_\_ S.C. \_\_\_\_, 347 S.E.2d 112, 114 (S.C. App. 1986). Thus, the court clearly has the authority to modify a commitment order. Next, it is necessary to consider in what manner an order may be modified or vacated. Again, the court's jurisdictional statute should be referred to. Section 20-7-420(24) gives the court jurisdiction

[t]o release on probation prior to the expiration of the full term a person committed to jail for failure to obey an order of the court, where the court is satisfied that the best interest of the family and the community will be served thereby.

The Honorable David H. Maring, Sr.  
November 25, 1987  
Page Three

2. Does it matter if the judge has concluded that term of court?
3. Does it matter if that judge no longer is presiding in the county in which he committed the respondent?

The above two questions can be answered together. When a term of court has ended or when a judge has "rotated" to another county, he loses jurisdiction to modify his order from an earlier term of court, except to correct clerical errors. As stated by the Supreme Court,

[a] trial judge possesses the authority to modify or amend his own judgments ... until the expiration of the term at which they were had. This authority ends with the term of court except as to corrections of clerical or formal error.

Center v. Center, 269 S.C. 367, 237 S.E.2d 491, 494, (1977). 2/ In other words, after expiration of the term, the judge may not make any modification which involves the exercise of discretion of the court on the merits or on matters of substance. 49 C.J.S. Judgments §238. However, as noted by Chief Justice Ness in Doran, note 1, supra, "Under Rule 59(e), S.C.R.C.P., a trial judge may [upon motion] alter or amend an order for a period of ten days after entry of judgment." 343 S.E.2d at 619. 3/ Rule 59(e) thus provides an exception to the general rule.

4. Can another judge change that order?

A trial judge does not have the power to modify or reverse the order of another trial judge, upon the same facts or issues. 4/

---

2/ See also Michel v. Michel, 289 S.C. 187, 345 S.E.2d 730 (1986); Doran v. Doran, 288 S.C. 477, 343 S.E.2d 618 (1986); Whittle v. Multiple Services, Inc., 283 S.C. 559, 324 S.E.2d 62 (1984); Barnett v. Piedmont Shirt Corporation, 230 S.C. 34, 94 S.E.2d 1 (1956); Rule 60(a), S.C.R.C.P.

3/ Doran and the other cases cited in note 1 were heard prior to the adoption of the S.C.R.C.P.

4/ Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (S.C. App. 1985); State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (S.C. App. 1985); Nat. Bank of S.C. v. Smotts, 280 S.C. 126, 311 S.E.2d 98 (S.C. App. 1984); Graham v. Town of Loris, 272 S.C. 442, 248 S.E.2d 594 (1978).

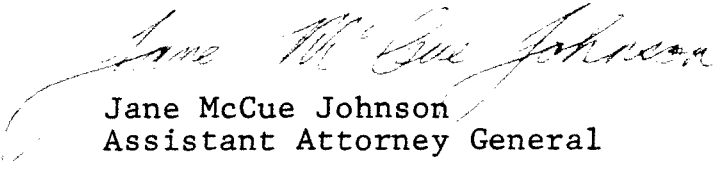
The Honorable David H. Maring, Sr.  
November 25, 1987  
Page Four

However, the cases illustrate that a judge has authority to issue a subsequent ruling in the same case on facts or issues not decided by the "first" judge. See, for example, Mann, note 3 supra, (first judge held defendant in default for failure to answer -- second judge determined failure to answer was excusable, based on facts not considered by first judge, and vacated default judgment); Nat. Bank, note 3, supra (first judge issued mortgage foreclosure decree -- second judge granted deficiency judgment to bank, thereby "disposing of a remaining issue ..." 311 S.E.2d at 99).

I believe that in the context of reviewing contemnners committed to jail for non-support, a family court judge would have the authority to modify another judge's order based only on facts not considered and ruled upon by the "first" judge.


I trust that the foregoing has satisfactorily responded to your inquiry. Please advise if you need additional assistance or clarification.

Sincerely yours,

  
Jane McCue Johnson  
Assistant Attorney General

JMJ/jps

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions